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UNITED STATES DEPARTMENT OF COMMERCE
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Washington, D.C. 20231

December 12, 2002

READ TAINTOR
98 Mason Lane
North Salt Lake, UT 84054

Dear Sir/Madam,

This is to Deny your refund request in the amount of \$500.00, for patent/serial number 10036042.

This refund was denied by the office of petitions

See Copy.

Sincerely,

ELEANOR KURTZ
Office of Initial Patent Examination
Refund Section, Office of Finance



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Read Robert Taintor
98 Mason Lane
North Salt Lake, UT 84054

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JUL 29 2002

OFFICE OF PETITIONS

In re Application of
Read Robert Taintor
Application No. 10/036,042
Filed: November 9, 2001
For: Method and kit for rapid concurrent
identification and antimicrobial susceptibility
testing of microorganisms from broth culture

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: DECISION DISMISSING REQUEST
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In re Application of
Read Robert Taintor
Application No. 09/998,638
Filed: December 3, 2001
For: Method and kit for rapid concurrent
identification and antimicrobial susceptibility
testing of microorganisms from broth culture

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This is a decision on the request for refund received February 6, 2002, requesting that the \$500 fees (\$370 basic filing fee and \$130 petition fee) submitted with the application assigned application No. 10/036,042 be refunded.

Applicant states that the application was filed by Express Mail on November 9, 2001, but was received in the U.S. Patent and Trademark Office (USPTO or Office) in January, 2002. Applicant also states that he was informed by the Post Office that the application was going to be returned to him and not sent to the USPTO. Accordingly, applicant had a new application hand-delivered to the Office which was assigned application No. 09/998,638 and accorded a filing date of December 3, 2001.

It is noted that there was no indication in the application papers filed on December 3, 2001, and assigned application No. 09/998,638, that the application was a duplicate of a previously submitted application.

The fact that applicant has filed duplicate or substantially duplicate applications does not entitle applicant to a refund of the filing fee. The application papers filed on November 9, 2001, as application No. 10/036,042, are entitled to a filing date of November 9, 2001, and the filing fee paid in application No. 10/036,042 is the fee required by law. Similarly, the application papers filed on December 3, 2001, as application No. 09/998,638, are entitled to a filing date of December 3, 2001, and the filing fee paid in application No. 09/998,638 is the fee required by law.

37 CFR 1.26(a) reads:

(a) The Commissioner may refund any fee paid by mistake or in excess of that required. **A change of purpose after the payment of a fee, such as when a party desires to withdraw a patent or trademark filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee.** The Office will not refund amounts of twenty-five dollars or less unless a refund is specifically requested, and will not notify the payor of such amounts. If a party paying a fee or requesting a refund does not provide the banking information necessary for making refunds by electronic funds transfer (31 U.S.C. 3332 and 31 CFR part 208), or instruct the Office that refunds are to be credited to a deposit account, the Commissioner may require such information, or use the banking information on the payment instrument to make a refund. Any refund of a fee paid by credit card will be by a credit to the credit card account to which the fee was charged. (Emphasis added).

Section 607.02 of the Manual of Patent Examining Procedure, Eighth Edition (August 2001) reads, in part, as follows:

Under 35 U.S.C. 42(d) and 37 CFR 1.26, the Office may refund: (1) a fee paid by mistake (e.g., fee paid when no fee is required); or (2) any fee paid in excess of the amount of fee that is required. See *Ex parte Grady*, 59 USPQ 276, 277 (Comm'r Pat. 1943) (the statutory authorization for the refund of fees under the "by mistake" clause is applicable only to a mistake relating to the fee payment). **When an applicant or patentee takes an action "by mistake" (e.g., files an application or maintains a patent in force "by mistake"), the submission of fees required to take that action (e.g., a filing fee submitted with such application or a maintenance fee submitted for such patent) is not a "fee paid by mistake" within the meaning of 35 U.S.C. 42(d).** 37 CFR 1.26(a) also provides that a change of purpose after the payment of a fee, as when a party desires to withdraw the filing of a patent application for which the fee was paid, will not entitle the party to a refund of such fee. (Emphasis added and error corrected).

Accordingly, the request is dismissed.

In reference to application No. 10/036,042, applicant states that he "would also like to abandon this application and have it returned to me." This statement will not be treated as a request to expressly abandon application No. 10/036,042. If applicant wants to abandon an application, he should file a letter of express abandonment in compliance with 37 CFR 1.138 in the application he wishes to abandon. The letter of express abandonment must be signed by the applicant. It is noted that application No. 10/036,042 has been accorded an earlier filing date (November 9, 2001) than application No. 09/998,638 (December 3, 2001).

Application No. 09/998,638 is being returned to Technology Center Art Unit 1651 for examination in due course.

Application No. 10/036,042 is being returned to Initial Patent Examination Division for further processing.

Telephone inquiries specific to this matter should be directed to the undersigned at (703)306-5586.



Eugenia A. Jones
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy